**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE V.GIRI**

**TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929**

**WP(C).No. 30022 of 2007(Y)**
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**PETITIONER:**
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**S.SREEKUMAR,**
**DEPUTY CHIEF ENGINEER (CIVIL)**
**(PRESENTLY UNDER SUSPENSION)**
**KERALA STATE ELECTRICITY BOARD,**
**RESIDING AT FLAT NO. 5A/2 TOUCHSTONE,MANOR**
**MATHRUBHOOMI ROAD, VANCHIYOOR,THIRUVANANTHAPURAM.**

**BY ADV. SRI.K.R.B.KAIMAL (SR.),**
**SRI.ANIL K.NAIR,**
**SRI.B.UNNIKRISHNA KAIMAL,**
**SRI.V.MADHUSUDHANAN,**
**SRI.PRAMJI PAUL VAZHAPPILLY,**
**SRI.M.SREEKUMAR.**

**RESPONDENTS:**
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1. **KERALA STATE ELECTRICITY BOARD,**
   **REPRESENTED BY THE SECRETARY, VYDYUTHI BHAVAN,**
   **PATTOM, THIRUVANANTHAPURAM.**

2. **THE CHAIRMAN,**
   **KERALA STATE ELECTRICITY BOARD,**
   **VYDYUTHI BHAVAN,PATTOM, THIRUVANANTHAPURAM.**

3. **THE LEGAL ADVISER AND DISCIPLINARY**
   **ENQUIRY OFFICER, K.S.E BOARD, THIRUVANANTHAPURAM.**

**BY SRI. K.S. ANIL, S.C, KSEB.**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

V.GIRI, J.

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W.P.(C)30022/2007

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Dated this the 4th day of December 2007

JUDGMENT

The petitioner is a Deputy Chief Engineer of the Electricity Board. He was placed under suspension as per Ext.P2 Order dated 22.9.2006. This was on the basis of the complaints submitted by various Associations of the Electricity Board and submitted before the Minister for Electricity. It seems that there was a preliminary enquiry by the vigilance Wing of the Board and the enquiry apparently revealed serious irregularities and illegalities in the tender/purchase and execution of works in Civil Circle, Pallom as mentioned in the order. Ext.P3 contains the statement of allegations. Petitioner submitted Ext.P4 written statement of defence. By Ext.P7 order, the Chairman of the Board - the disciplinary authority, after examining the charges and the statement of

defence proceeded to direct a formal enquiry by the Legal Officer and Disciplinary Enquiry Officer of the Board. By Exts.P6 and P7 orders, the enquiring authority was directed to complete the formal enquiry and submit a report within two months. It is common case that the enquiry has not been completed so far.

2. Petitioner sought for review of suspension by Ext.P9 representation submitted before the Chairman on 19.4.2007. This Court, in Ext.P10 judgment, directed the Chairman to consider Ext.P9 and pass orders thereon, within two months from the date of receipt of a copy of this judgment. The Chairman declined to review the suspension as per Ext.P11 order. The same is under challenge in this writ petition.

3. On going through Ex.P11, it was felt that under the Kerala Civil Services (Classification, Control and Appeals) Rules which are applicable to employees of the Board an order passed by the

disciplinary authority could be challenged in an appeal before the Board. But Ext.P11 order would show that the Chairman has apparently discussed the issue with full time members of the Board, before taking a decision as evidenced by Ext.P11 and therefore an appeal before the Board consisting of the same members as also the Chairman of the Board would not be efficacious. The learned standing counsel appearing on behalf of the Electricity Board was therefore directed to get instructions on this aspect and the writ petition was adjourned from time to time. Apparently, what is stated in Ext.P11 that the Chairman of the Board has acted after consultation with the full time members of the Board before passing Ext.P11 order, seems to be correct and the standing counsel also has not been able to produce any other material in rebuttal thereof.

3. In the circumstances, I have taken up the

writ petition itself for consideration, on consent of both parties. I have heard the learned senior counsel Mr.KRB Kaimal on behalf of the petitioner and Mr.Anil, Liaison Officer on behalf of the Electricity Board.

4. Mr.Kaimal, learned senior counsel referred to Ext.P11 order. He further contends that a perusal of Ext.P11 order would show that apparently reference has been made to earlier allegations which have been levelled against the petitioner. He contends that this will show that a decision not to revoke the suspension seems to have been taken on the basis of the proceedings which were earlier initiated against the petitioner. He further contends that suspension was ordered on the basis of the allegations contained in Ext.P3 and therefore the decision to either revoke the suspension or not to revoke the same should have been taken only with reference to such allegations and not with reference to allegations which were

earlier levelled against him.

4. I find from Ext.P11 that the Chairman of the Board who is the disciplinary authority has proceeded to consider the application for revocation of the suspension after discussion with the full time members of the Board. This is not in consonance with the direction issued by this Court in Ext.P10 judgment. It is also not in consonance with the well recognized principle of a statutory authority required to exercise powers conferred on him to necessarily act on his own and not to act as dictated to by either a superior authority or any other external agency. Significantly the full time members of the Board would also be there in the Full Time Board of the Electricity Board which will act as the appellate authority in relation to the orders passed by the Chairman. In other words, any chance of a statutory appeal against Ext.P11 order would also be rendered illusory. Therefore the review of the petitioner's suspension should be

considered by the Chairman on his own, in accordance with law, and in the light of the circular issued by the Board regulating cases of review of suspension, ordered under different circumstances.

5. In the result, the Chairman – the second respondent shall reconsider Ext.P9, untrammeled by Ext.P11 and considering the case of the petitioner's request for revocation of the suspension in the light of Ext.P8 circular. Fresh orders in this regard shall be passed within a period of one month from the date of receipt of a copy of this judgment.

V.GIRI, JUDGE

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